

AMENDED IN ASSEMBLY APRIL 17, 2006

CALIFORNIA LEGISLATURE—2005–06 REGULAR SESSION

ASSEMBLY BILL

No. 2916

**Introduced by Committee on Water, Parks and Wildlife (Wolk
(Chair), Villines (Vice Chair), Bass, Lieu, Matthews, Parra,
Runner, and Saldana)**
(Coauthor: Assembly Member Emmerson)

February 24, 2006

An act to add Section 13015 to the Fish and Game Code, relating to fish and wildlife resources, and declaring the urgency thereof, to take effect immediately.

LEGISLATIVE COUNSEL'S DIGEST

AB 2916, as amended, Committee on Water, Parks and Wildlife. Department of Fish and Game: endowment funds.

(1) Existing law establishes the Department of Fish and Game within the Resources Agency, and generally charges the department with the administration and enforcement of the Fish and Game Code. Existing law authorizes the department to enter into various agreements to provide for the mitigation of adverse biological impacts on, and the protection of, fish, wildlife, and plants, and their respective habitats.

Existing law establishes the Special Deposit Fund, which consists of moneys that are paid into it in trust pursuant to law, and is appropriated to fulfill the purposes for which payments into it are made.

Existing law establishes the Fish and Game Mitigation and Protection Endowment Principal Account and the Fish and Game Mitigation and Protection Expendable Funds Account in the Special

Deposit Fund. Existing law requires the department to deposit the endowment funds received pursuant to various mitigation and protection agreements, and interest that accrues on that principal, in the Fish and Game Mitigation and Protection Endowment Principal Account, if the moneys are designated for specified purposes. Existing law requires the department to utilize the interest generated on the endowment funds, upon appropriation, to fund long-term management, enhancement, monitoring, and enforcement activities on habitat lands in a manner consistent with the terms of the underlying agreement supplying the moneys.

This bill would prohibit the department from requiring as a condition of obtaining any permit, banking agreement, clearance, or mitigation approval from the department that the department hold, manage, or administer any mitigation endowment required by the department. The bill would ~~require~~ *authorize* the department, whenever feasible, to enter into agreements with public entities or nonprofit organizations that are eligible, under standards adopted by the department pursuant to the bill, for the management, administration, investment, and disbursement of mitigation endowment funds, as defined. The bill would also impose audit and reporting requirements on entities entering into agreements with the department.

(2) This bill would declare that it is to take effect immediately as an urgency statute.

Vote: $\frac{2}{3}$. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. It is the intent of the Legislature in the
- 2 enactment of this act to clarify existing law and otherwise allow
- 3 qualified public entities and nonprofit organizations to hold,
- 4 manage, invest, and disburse mitigation endowment funds held
- 5 for the purpose of long-term stewardship of preserved and
- 6 protected wildlife habitats, endangered species, wetlands,
- 7 agricultural lands, and open-space lands in the state.
- 8 SEC. 2. Section 13015 is added to the Fish and Game Code,
- 9 to read:
- 10 13015. (a) As used in this section, “mitigation endowment
- 11 funds” or “endowment funds” includes moneys required by the

1 department to be placed in a nonwasting endowment to mitigate
2 the adverse impacts caused by a permitted activity ~~on, and~~
3 ~~moneys received pursuant to an agreement or permit described~~
4 ~~in subdivision (b) of Section 13014 for purposes described in~~
5 ~~paragraph (2) of that subdivision. “Mitigation endowment~~
6 ~~funds” or “endowment funds” only includes funds that are used~~
7 ~~to manage natural lands, including, but not limited to,~~
8 ~~agricultural lands, wildlife habitat, wetlands, endangered species~~
9 ~~habitat, and open space areas, and moneys received pursuant to~~
10 ~~an agreement or permit described in subdivision (b) of Section~~
11 ~~13014 for purposes described in paragraph (2) of that~~
12 ~~subdivision.~~

13 (b) Notwithstanding any other provision of law, the
14 department shall not require as a condition of obtaining any
15 permit, banking agreement, clearance, or mitigation approval
16 from the department that the department hold, manage, or
17 administer any mitigation endowment required by the
18 department. Nothing in this section shall be construed to alter the
19 authority of the department to require mitigation endowments or
20 any existing mitigation standard for conservation transactions
21 with endowment funding subject to department approval.

22 (c) The department ~~shall~~ *may*, whenever feasible, enter into
23 agreements with public entities or nonprofit organizations that
24 are eligible under standards adopted pursuant to subdivision ~~(e)~~
25 ~~(d)~~ for the management, administration, investment, and
26 disbursement of mitigation endowment funds. *Where mitigation*
27 *is required pursuant to a court order, the court may require that*
28 *the endowment funds be held by the state.*

29 (d) The department shall develop and adopt standards of
30 eligibility and guidelines to ensure that all public entities or
31 nonprofit organizations that hold and manage endowment funds
32 satisfy all of the following requirements:

33 (1) The entity or organization has as its primary mission the
34 protection and preservation of natural lands, including, but not
35 limited to, agricultural lands, wildlife habitat, wetlands,
36 endangered species habitat, and open-space areas.

37 (2) The entity or organization has the capacity to effectively
38 manage those mitigation endowments, and, if the endowment
39 manager is not the ultimate land manager, the natural lands

1 manager who receives the proceeds of the endowment is
2 qualified.

3 (3) The entity or organization has the capacity to achieve over
4 the life of the agreement higher adjusted rates of return on the
5 investment of those funds than the department would if it held
6 the funds in the State Treasury.

7 (4) The entity or organization complies with generally
8 accepted accounting practices, and expenditure and investing
9 procedures, including, but not limited to, maintaining accurate
10 books and records that specify with particularity the costs and
11 expenses for which reimbursement is being made, accounting for
12 any pooling of investments using fund accounting, and ensuring
13 that endowments are tied to and accounted for regarding a
14 specific property or project.

15 (5) (A) The entity or organization uses sound investment
16 practices, similar to those used for other long-term investments,
17 endowments, and pension funds, for the investment of those
18 mitigation endowment funds. ~~The restrictions imposed upon~~
19 ~~local agencies set forth in Notwithstanding Article 1~~
20 ~~(commencing with Section 53600) of Chapter 4 of Part 1 of~~
21 ~~Division 2 of Title 5 of the Government Code shall not apply to~~
22 ~~mitigation endowment funds, mitigation endowment funds held~~
23 ~~by local agencies may be deposited in investments not~~
24 ~~enumerated under that article, if the investments meet the~~
25 ~~standards of the Uniform Prudent Investor Act (Article 2.5~~
26 ~~(commencing with Section 16045) of Chapter 1 of Part 4 of~~
27 ~~Division 9 of the Probate Code).~~

28 (B) A nonprofit organization adopts policies to guide the
29 management, monitoring, and performance of endowment funds,
30 including methods for allocating investments, investment
31 guidelines, fund administration accounting, auditing, reporting,
32 and review.

33 (C) A nonprofit organization ~~that elects to hire investment~~
34 ~~counsel selects hires~~ investment managers that demonstrate
35 relevant experience and compliance with industry standards for
36 prudent investment.

37 (D) A public entity, in managing the endowment, invests and
38 reinvests the endowment funds as a prudent investor would in
39 any kind of property, real or personal, or mixed, that persons of
40 prudence, discretion, and intelligence acquire for their own

1 accounts, considering the purposes and terms of any management
2 and funding agreement or other permit and agreement subject to
3 the Uniform Prudent Investor Act (Article 2.5 (commencing with
4 Section 16045) of Chapter 1 of Part 4 of Division 9 of the
5 Probate Code).

6 (e) A public entity or nonprofit organization that receives
7 mitigation endowment funds pursuant to subdivision (c) shall
8 prepare and submit to the department an annual report on the
9 status and management of the endowment and annual budget and
10 on the expenditure of those funds, including current fund account
11 balances, current year expenditures, budgeted-to-actual
12 expenditures comparison, and original endowment status versus
13 inflation-adjusted endowment status.

14 (f) All endowment funds subject to this section shall be
15 audited annually using generally accepted accounting practices
16 by a qualified, independent accounting firm. *A copy of the audit*
17 *shall be submitted to the department and to the Department of*
18 *Finance.*

19 (g) All endowment funding agreements pursuant to
20 subdivision (c) shall contain provisions to address
21 nonperformance. The department shall be named as the successor
22 trustee unless the agreement identifies another appropriate
23 trustee, as determined by the department, or a process for
24 identifying an appropriate successor.

25 SEC. 3. This act is an urgency statute necessary for the
26 immediate preservation of the public peace, health, or safety
27 within the meaning of Article IV of the Constitution and shall go
28 into immediate effect. The facts constituting the necessity are:

29 In order to quickly improve the management of many pending
30 land management endowment accounts and substantial dollars
31 currently administered by the Department of Fish and Game in
32 low interest bearing accounts that are barely keeping up with
33 inflation, causing delays in payments to the organizations
34 responsible for managing endowment properties for the
35 protection of the fish and wildlife of this state, it is necessary that
36 this act take effect immediately.

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